

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §9.8 relating to Enhanced Contract and Performance Monitoring to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §9.8 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

DocuSigned by:

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Director, Contract Services Division

Recommended by:

DocuSigned by:

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Executive Director

116055 July 29 2021

Minute
Number

Date
Passed

Proposed Preamble

The Texas Department of Transportation (department) proposes the amendments to §9.8 concerning Enhanced Contract and Performance Monitoring.

EXPLANATION OF PROPOSED AMENDMENTS

Section 9.8, Enhanced Contract and Performance Monitoring, requires the department to monitor and report to the Texas Transportation Commission (commission), on a quarterly basis, the performance and status of each contract, other than a low-bid construction and maintenance contract, that is valued at \$5 million or more or that the department determines constitutes a high-risk to the department. The department has determined that due to the high volume of department contracts that are valued at \$5 million or more, the dollar threshold that identifies contracts that must be monitored and reported to the commission should be increased to an amount that will meaningfully capture the department's highest dollar contracts. Accordingly, amended §9.8, Enhanced Contract and Performance Monitoring, is revised to increase the dollar threshold that identifies contracts that must be reported to the Commission from \$5 million to \$50 million. The department will continue to monitor and report on contracts with a lesser value that it determines constitute high-risks to the department.

FISCAL NOTE

1 Stephen Stewart, Chief Financial Officer, has determined, in
2 accordance with Government Code, §2001.024(a)(4), that as a
3 result of enforcing or administering the rules for each of the
4 first five years in which the proposed rules are in effect,
5 there will be no fiscal implications for state or local
6 governments as a result of enforcing or administering the rules.

7
8 LOCAL EMPLOYMENT IMPACT STATEMENT

9 Mr. Kenneth Stewart, Director of Contract Services Division, has
10 determined that there will be no significant impact on local
11 economies or overall employment as a result of enforcing or
12 administering the proposed rules and therefore, a local
13 employment impact statement is not required under Government
14 Code, §2001.022.

15
16 PUBLIC BENEFIT

17 Mr. Stewart has also determined, as required by Government Code,
18 §2001.024(a)(5), that for each year of the first five years in
19 which the proposed rules are in effect, the public benefit
20 anticipated as a result of enforcing or administering the rules
21 will be improvements to the department's management of contracts
22 through the identification and mitigation of risk. There are no
23 anticipated economic costs for persons required to comply with
24 the proposed rules.

25
26 COSTS ON REGULATED PERSONS

Mr. Stewart has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Stewart has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

1 (5) it would not create a new regulation;

2 (6) it would not expand, limit, or repeal an existing
3 regulation;

4 (7) it would not increase or decrease the number of
5 individuals subject to its applicability; and

6 (8) it would not positively or adversely affect this
7 state's economy.

8
9 TAKINGS IMPACT ASSESSMENT

10 Mr. Stewart has determined that a written takings impact
11 assessment is not required under Government Code, §2007.043.

12
13 SUBMITTAL OF COMMENTS

14 Written comments on the amendments to §9.8 may be submitted to
15 Rule Comments, General Counsel Division, Texas Department of
16 Transportation, 125 East 11th Street, Austin, Texas 78701-2483
17 or to RuleComments@txdot.gov with the subject line "*Contract*
18 *Risk Reporting*." The deadline for receipt of comments is 5:00
19 p.m. on September 13, 2021. In accordance with Transportation
20 Code, §201.811(a)(5), a person who submits comments must
21 disclose, in writing with the comments, whether the person does
22 business with the department, may benefit monetarily from the
23 proposed amendments, or is an employee of the department.

24
25 STATUTORY AUTHORITY

26 The rule is proposed under Transportation Code, §201.101, which
27 provides the commission with the authority to establish rules

1 for the conduct of the work of the department, and more
2 specifically, Government Code, §2261.253, which requires a state
3 agency to adopt rules to establish a procedure to identify each
4 contract requiring enhanced contract or performance monitoring
5 and submit information on the contract to its governing body.

6

7 CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING
8 Government Code, §2261.253.

SUBCHAPTER A. GENERAL

§9.8. Enhanced Contract and Performance Monitoring.

(a) The department shall monitor and report to the Texas Transportation Commission, on a quarterly basis, the performance and status of each contract, other than a low-bid construction and maintenance contract, that is valued at \$50 [~~\$5~~] million or more or that the department determines constitutes a high-risk to the department.

(b) The department immediately shall notify the commission of any serious issue or risk that is identified in a contract and that has not been reported in a quarterly report provided under subsection (a) of this section.

(c) This section does not apply to a memorandum of understanding, interagency contract, interlocal agreement, or contract for which there is not a cost.